

CITY OF IDAHO FALLS
BOARD OF ADJUSTMENT
P.O. BOX 50220
IDAHO FALLS ID 83405-0220
(208) 612-8276

August 22, 2013
12:15 p.m.

City Annex Building, Council Chambers
680 Park Avenue

Members Present: Bryan Bjorgaard; Jake Cordova; Alex Creek; Steve Davies; Brent McLane; and James Wyatt.

Members Absent: Stephanie Austad; and Richard Lee.

Staff Present: Brad Cramer, Assistant Director; and Debra Petty, Recording Secretary.

Also Present: Applicants Lee Eslinger; Stanley Cleverly; and three interested citizens.

Changes to Agenda: None.

Call to Order: Chair Wyatt called the meeting to order at 12:15 p.m.

Minutes: None

Public Hearings: **Variance**
Portions Lot 1 and 2, Block 1, Homestead Square (1284 and 1288 E 16th Street)

Cramer presented the staff report, a part of the record. Members received a copy of a letter from Mr. Lee Gagner expressing opposition to the variance request, also a part of the record. Cramer asked the Board to consider both properties as one parcel or a reduction to the setbacks is irrelevant. The home was constructed in 1948 and by 1985/1986 had been moved to its current location. . He said the home and shed were sold to Mr. Eslinger in 2003. In 2011 the house is conveyed to the Federal National Mortgage Association and the shed retained by Mr. Eslinger was used as a dwelling. The violation of the Subdivision Ordinance occurred with the transfer of property in 2008 and 2011. This in turn led to the violations of the Zoning Ordinance. If the shed is conveyed back to the house the subdivision ordinance is rectified. All that remains is the consideration of the variance to the setbacks to convert the shed to a residence. Cramer was informed Mr. Eslinger will convey the shed to Mr. Adams, new owner of 1284 E 16th Street.

Cramer said there are no setback requirements for an accessory building in the R-3A zone. The required setbacks became obligatory with the conversion of the shed to a residence. However, the shed also overlaps the building envelope. There is adequate room on the lot to move the shed for compliance, but is not possible because the basement houses a well. Cramer said the placement of the buildings may be considered a physical limitation and was not the creation of the current owner. It was created when the structures were moved to allow an office building. When considering harm to the neighborhood, the placement of the structures will not change. The use will change to allow the shed as a dwelling. Cramer said, if approved, the shed must pass inspection by the building department for compliance. If it does not meet code it will have to be vacated as a residence. The shed is landlocked with no access to a public street. There is a cross-access agreement with the current owner and Mr. Eslinger but the details are not known.

Chair Wyatt opened the hearing to public comment.

Lee Eslinger, 1288 E 16th Street, Idaho Falls, ID. 83404. Mr. Eslinger submitted a letter regarding his occupancy of the shed, a part of the record. He said Mr. Gagner deeded him the home and garage in separate transactions, a violation of the subdivision ordinance. He said conveyance of the property to the current owner of 1284 is underway. He will comply with any required building code upgrades.

Mr. Mark Fuller, Attorney, 560 Douglas, Idaho Falls, ID. Mr. Douglas represents Mr. Eslinger. He said the situation was created by the original owner. Mr. Eslinger purchased the home and later reached an agreement for the purchase of the shed. A right-of-access agreement allowed Mr. Eslinger access the shed through lots 1 and 3. At the time of foreclosure the bank was not aware of the separate parcel because it was owned independently. Attempts were made to reunite the shed with Mr. Gagner's property but separate utilities made it impossible. Mr. Eslinger and the new owner, Mr. Nick Adams, have reached a contract-for-deed so both parcels are under Mr. Adams ownership. In lieu of a cash transaction, Mr. Eslinger will live rent free for 5 years as compensation for the transaction. The sale is contingent upon approval of the variance. Mr. Fuller said if the shed doesn't meet building code requirements and pass inspection the shed may no longer be used as a residence. Wyatt believes the issue was created so much by the original owner but when Mr. Eslinger converted the shed to a residence. Cordova said it began with the creation of an illegal plat by Mr. Gagner.

Nick Adams, 1284 E 16th Street, Idaho Falls, ID. Mr. Adams said a sales agreement was reached with Mr. Eslinger and is satisfactory to both parties. If the shed does not meet code for a residence he would work for another solution with Mr. Eslinger. He told Davies the home is a duplex and the shed will become a third rental property. Cramer said if the setback requirements were not an issue two homes could exist on the property.

Chair Wyatt closed the hearing to public comment.

Davies said the facts are complex but believes it meets the requirements for approval and is ready to make a motion. Discussion arose as to who the actual applicant ought to be. Cramer said Mr. Adams signed the Affidavit of Legal Interest allowing Mr. Eslinger to apply for the variance. Wyatt does not agree with the manner in which the request came about. The shed was never intended to be a residence. McLane concurs with Wyatt.

Davies moved to approve the variance request to reduce the side yard setback from 6' to 0' and reduce the rear yard setback from 25' to 4' for a Portion of Lots 1 and 2, Block 1, Homestead Square with the condition the two parcels are held under one-ownership and the "shed" is determined habitable by the building department as a residence. Motion seconded by Creek.

Aye: Bryan Bjorgaard; Jake Cordova; Alex Creek; Steve Davies,
Nay: Brent McLane; and James Wyatt.
Abstain:

Wyatt said there must be 5 concurring votes for a legal decision. Davies said the applicant is trying to resolve a difficult situation. Granting the variance creates an appropriate use in an R-3A zone. McLane supports the comments by Wyatt. The circumstances don't support the conversion of the shed to a residence by Mr. Eslinger. Davies said the board makes a number of allowances in these cases. Wyatt agrees the issue would be cleaned up but does not agree with the way it came about.

Creek proposed a revote on the original motion. Chair Wyatt accepts the original motion by Davies. Bjorgaard seconded the motion and passed.

Aye: Bryan Bjorgaard; Jake Cordova; Alex Creek; Steve Davies, and James Wyatt.

Nay: Brent McLane

Abstain:

Variance

Lot 21, Block 6, Coachman West Division No 2 (871 Dalmatian Drive)

Cramer presented the staff report, a part of the record. He said there are numerous violations in the subdivision. The Coachman West Subdivision has a record of over twenty variances requests of which seventeen were approved. Cramer made it clear variances signed between neighbors are not recognized by the city. The subdivision was designed as a mobile home park. As traditional mobile homes evolved into double-wide structures the lots were not sufficient to accommodate the change in building size. The Cleverlys lot has some unique limitations. It is pie-shaped with a frontage of one-hundred five-feet wide and narrows to a rear lot line of thirty feet. Three neighbors contacted staff with concerns the garage would impact property values and created a fire hazard. Staff finds the lot unique. The lot was platted in this manner and not the creation of the current owner. It is difficult to support the claim it is a detriment to the neighborhood because it doesn't create a new development pattern or makes the present situation worse. Staff recommends approval with the condition it meets building code requirements and passes inspection.

Chair Wyatt opened the hearing to public comment.

Andrew Wayman, 2128 Rendezvous, Idaho Falls, ID. Mr. Wayman represents the Cleverlys. He noted the size and shape of the lot is different from the average lot in the subdivision. His client purchased the pre-fab garage and assumed the contractor would know the zoning ordinance requirements and get the necessary building permits. The garage was placed in its current location in preparation for Mr. Cleverly's declining health. Considering the number of variances within this subdivision it is not in conflict with the neighborhood. The claims by neighbors concerning property values and fire hazard are not supported by experts.

Ernie J. Miller, 1985 Dalmatian, Idaho Falls, ID. Mr. Miller said many of the homes were constructed prior to 1978. When he needed a variance he received the necessary permits from the city. The building is already constructed and sets precedence for others to follow. Creek said the number of variances, many of which have no record, has already set precedence. Mr. Miller stated it is not right to construct the garage and later ask forgiveness after. Wyatt concurs but believes the applicants thought they were doing the right thing. Mr. Miller agrees it would no longer be an issue for him if the building meets building codes and passes inspection by the building department. Wyatt said it is often more expensive to make any necessary changes. He said the contractor is accountable for failure to have the necessary permits and follow code.

Karma Cleverly, 871 Dalmatian, Idaho Falls, ID. Mrs. Cleverly said they trusted the contractor was doing the right things. Their intent was not to devalue the neighborhood but make it a nice addition that matches their home. The home and garage is not an eyesore. The garage was constructed in preparation for her husband's future health needs. They will do what is required to pass inspection by the building department.

Andrew Wayman, 2128 Rendezvous, Idaho Falls, ID. Mr. Wayman told Davies he represents the Cleverlys for the variance and has not pursued the actions of the contractor. There may be some future recourse.

Chair Wyatt closed the hearing to public comment.

The Board agrees the request meets the requirements for approval of the variance.

Davies moved to approve the variance request for the reduction of the side yard setback from 7½ feet to 6'4" for an outbuilding on Lot 21, Block 6, Coachman West, Division No. 2, 871 Dalmatian Drive because the lot is unique, was not created by the owner, and is not detrimental to the neighborhood with the condition the building meets building code requirements and passes inspection.

Aye: Bryan Bjorgaard; Jake Cordova; Alex Creek; Brent McLane; Steve Davies, and James Wyatt.

Nay:

Abstain:

Chair Wyatt proposed a meeting of the board will be held August 28, 2013, to approve the Findings of Fact and Conclusions of Law for the variances granted.

Adjourn:

Meeting adjourned at 2:45 p.m.

Richard Lee, Chair